2007-05775/

FOIP FOLIO

SASKATCHEWAN

September 2006

3rd ANNIVERSARY OF *THE HEALTH INFORMATION PROTECTION ACT* (HIPA)

Did you know that it was 3 years ago, September 1, 2003 to be precise, that Saskatchewan became the 3rd province in Canada to enact a stand-alone health information law – *The Health Information Protection Act* (HIPA)?

For all of you nostalgia buffs, consider a few of the highlights in the history of our HIPA.

In the Throne Speech delivered on March 9, 1998 the government included the following declaration:

> *New technology is part of health care's future.*
>
> *Our health system will move into the information age with the continuing development of* ***The Saskatchewan Health Information Network****;*
>
> *My government will introduce* ***The Health Information Protection Act*** *to safeguard all personal health information.*

HIPA was introduced in the Legislative Assembly as Bill 29 on April 23, 1999. The second reading debate was led off by the Honourable Judy Junor who said, in part,

> *In short, Mr. Speaker, the people of Saskatchewan trust their health professionals to handle their personal health information with respect for their right to personal privacy. The people of Saskatchewan deserve no less.*
>
> *However, Mr. Speaker, the demand for information needed to provide health services is growing. As the volume of information about us grows, as we ask for more tests and additional treatments, as the demands on the health system continue to increase, so too does the demand for information exchange. With increased demands for information comes an increased risk to the privacy of the individual. And, Mr. Speaker, the people of Saskatchewan demand that their personal health information continue to receive the protection they expect.*

That is why, Mr. Speaker, The Health Information Protection Act is so important. It ensures that even in the fast moving health system of today the tradition of respecting individual privacy will continue into the future. In fact, Mr. Speaker, we believe that this new important legislation adds significantly to the protection we have all come to expect from the health system.

Although Bill 29 was passed and even received Royal Assent in May 1999 it was not proclaimed for four years. Before it was proclaimed, Bill 28, *The Health Information Protection Amendment Act, 2003* was introduced, debated and passed in May 2003. As a result, when Saskatchewan reaches a stage where citizens have a "comprehensive health record", an individual may require that his or her comprehensive health record not be disclosed to trustees.

SOME ANNIVERSARY OBSERVATIONS

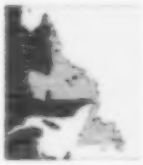
Today, almost all trustee organizations have identified one of their employees as their "HIPA Coordinator" or "Privacy Officer". Almost all trustees have undertaken some training. A number of trustees have attempted to provide the public with information about HIPA, their rights under HIPA and contact information for inquiries. Good examples are the College of Physicians and Surgeons, Saskatchewan Health and the Health Quality Council.

Notwithstanding the above, the experience of the Office of the Saskatchewan Information and Privacy Commissioner (OIPC) with complaints suggests that trustees could do much more in terms of being transparent in their collection, use and disclosure policies and practices. Our office has provided suggestions and recommendations to regional health authorities in particular on this score and to trustees more generally via our Investigation Report H2005-0002 (Prevention Program for Cervical Cancer).

NEW ACCESS AND PRIVACY FACE

Lori Sabiston is the new Office Manager/Consultant at the Access and Privacy Branch in Saskatchewan Justice. Lori will be providing office support and will also be active in program delivery. She will assume the central FOIP coordinator role that Sherri Fowler used to fulfil. This includes collection of statistics and distribution of forms. She will also provide research support to the branch and manage the office's web page.

NEWFOUNDLAND & LABRADOR TO JOIN 'HIA, HIPA, PHIA AND PHIPPA CLUB'



Health Minister Tom Osborne has confirmed that Newfoundland and Labrador will be proceeding with legislation to protect personal health information. Formal consultations are slated to commence later this year. The Newfoundland and Labrador Centre for Health Information (NLCHI) is developing an electronic record system to link health providers and facilities.

WHO IS YOUR ORGANIZATION'S ACCESS AND PRIVACY LEADER?

Our Saskatchewan access and privacy laws place responsibility for compliance directly on the "head" of the government institution, local authority or trustee. The "head" will be the Minister in the case of a department and the CEO in the case of a Crown. If the Minister or CEO wish they can delegate some or all of their powers to another individual, usually described as the **FOIP Coordinator**. This delegation must be in writing. Please provide the Office of the Information and Privacy Commissioner with a copy of that written delegation so that our office can ensure we are dealing with the appropriate person in each public body. As a best practice, we encourage public bodies to also integrate privacy and HIPA responsibility into the role of FOIP Coordinator.

SASKATCHEWAN ORGANIZATION TO RECEIVE THE CHIEF JUSTICE E.M. CULLITON 'RIGHT TO KNOW' AWARD

The City of Regina has been awarded the first Chief Justice E.M. Culliton 'Right to Know' Award. The Saskatchewan 'Right to Know' Committee chose the City in light of substantial progress it has made in operating as transparently as possible. The City receives more than 100,000 inquiries each year seeking information and has been able to deal with almost all of these inquiries informally and without resort to *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP). The City has been a leader in Saskatchewan in promoting open council meetings; it has undertaken a major in-service training of staff; and it has consistently demonstrated a pro-active approach to ensure new municipal information initiatives are vetted for compliance with the LA FOIP Act.

NEW SASKATCHEWAN OIPC REPORTS

Our office has just released two new Reports, both available at www.oipc.sk.ca under the *Reports* tab:

REPORT F2006-002 (SASKATCHEWAN RESEARCH COUNCIL)

The Applicant applied for access to records in the possession of the SRC. This included information relating to and generated by SRC in its analysis of samples provided for environment testing by various third parties. SRC refused access to all responsive records citing sections 13(1)(a), 17(1)(a), 17(2)(c)(i), 18(1)(f), 18(2)(a) and 19(1)(b) of FOIP. The SK OIPC determined that the raw data, the test reports, and other documents related directly to the testing carried out by SRC as a service for a fee had been properly withheld. It was determined that a few documents or portions thereof included in the record contained general administrative or billing information of SRC that should be released to the Applicant.

REPORT F2006-003 (SASKATCHEWAN JUSTICE)

The Applicant requested a review of the decision of Saskatchewan Justice to extend the 30 day response deadline in FOIP by an additional 15 days. Justice employed section 12(1)(b) of FOIP claiming that it could not reasonably complete "consultations" that were necessary in order to properly comply with the Applicant's application within the 30 day time limit. The SK OIPC determined that Justice did not properly invoke this subsection as it did not initiate consultations in a timely manner and many of those activities described by Justice as "consultations" did not qualify as consultations within the meaning of FOIP. The notice provided to the Applicant met the requirements of section 12(2) of FOIP. However, the response did not meet the requirements of section 7(2)(d) and subsequently section 12(3) of FOIP as Justice did not adequately identify which exemptions applied to each severed line item of the record nor did it offer adequate reasons for the refusal to permit access to certain records.

30TH ISSUE OF SASKATCHEWAN FOIP FOLIO

This issue of the FOIP FOLIO is our 30th. The reason we keep producing it is because of the positive feedback and encouragement we get from the public and from Saskatchewan's rapidly growing access and privacy community. We are, of course, indebted to those of you who suggest topics, point out typos and ask questions or seek more information about things you see in the newsletter. We encourage you to circulate your copy to colleagues who work in the same area. Anyone can become a subscriber by providing your email address to Kara at 787-8350. There is no charge. You can also access all archived issues of the FOLIO at our website, www.oipc.sk.ca under the tab – Newsletters.

FREEDOM OF INFORMATION DOES NOT INVOLVE ALTERING PUBLIC DOCUMENTS

The Alberta Information and Privacy Commissioner has raised serious questions about the conduct of a public body. During an inquiry, the Alberta Commissioner identified anomalies in the records of the government institution under review. The inquiry was suspended and a private investigation commenced. An email submitted to the Alberta OIPC had apparently been altered – by only one word, but that one word changed the entire meaning of the email. After a seven month investigation involving complex computer forensics, the RCMP is now conducting a criminal investigation into whether an Alberta government employee deliberately tried to mislead a public inquiry by submitting an altered document.

In Saskatchewan, it is an offence if any person "wilfully makes any false statement to, or misleads or attempts to mislead, the commissioner or any other person in the exercise of the powers, performance of the duties or carrying out of the functions of the commissioner" or who "without lawful justification or excuse wilfully obstructs, hinders or resists the commissioner" in the exercise of his powers under the provincial access and privacy legislation. Conviction for such an offence carries a penalty of a fine and/or imprisonment.

IDENTITY OF APPLICANTS IS PERSONAL INFORMATION

The Privacy Commissioner of Canada is investigating a high-profile incident where it appeared that the identity of an applicant under the federal *Access to Information Act* was disclosed to the Communications Director for the Prime Minister. This particular case has highlighted the need for government institutions and local authorities to ensure that when they receive and process an access request, the identity of the applicant is only disclosed to those within the organization who have a need to know for purpose of responding to the request. This should be included as an element in any FOIP or LA FOIP training program. This issue was also discussed in our September 2004 FOIP FOLIO.

CHECK OUT NEW WEBSITE FEATURES

Our OIPC website at www.oipc.sk.ca has two new features. There is a "History" button that will take you to a list of key privacy and access events through a Saskatchewan lens. There is also a dedicated "Right to Know" web page with frequently asked questions and some history of the right to know movement under the "Right to Know' tab.

FUTURE EVENTS

October 9, 2006 – *4th Annual- Privacy & Data Protection Conference 2006*, London, England. (visit www.transatlantic-events.com for details)

October 12-13, 2006 – *Stop the Bleeding – Bandage Solutions Don't Work*, Canadian Health Care Anti-Fraud Association, Halifax (visit http://www.chcaa.org/conference2006/ for details)

October 16-17, 2006 – *PHIPA Summit 2006*, Information Management for Health Care and Personal Health Information Privacy, Toronto (visit http://www.governmentevents.ca for details)

October 18, 2006 – SK OIPC Brown Bag Luncheon Workshop (12:10 p.m. – 12:50 p.m.), Topic: "How to survive and even have fun as the FOIP/HIPA Coordinator", 503-1801 Hamilton Street, Regina (call (306) 787-8350 for details or to register)

October 19, 2006 – *Advocacy tips when you represent a client in a federal or provincial privacy investigation or access review*, CBA Privacy and Access Law Section – Saskatoon Club (call 1-800-424-8288 for details)

November 8, 2006 – SK OIPC Brown Bag Luncheon Workshop (12:10 p.m. – 12:50 p.m.), Topic: "How much is too much? Simplifying Fees and Fee estimates", 503-1801 Hamilton Street, Regina (call (306) 787-8350 for details or to register)

November 13, 2006 – *Electronic Health Information and Privacy Conference*, Ottawa, Ontario (visit http://www.ocri.ca/ehip for details)

December 6, 2006 – SK OIPC Brown Bag Luncheon Workshop (12:10 p.m. – 12:50 p.m.), Topic: "Severing made easy or at least a lot easier!", 503-1801 Hamilton Street, Regina (call (306) 787-8350 for details or to register)

TO CONTACT US:

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